

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

In re:

CIRCUIT CITY STORES, INC., et al.,

Debtors,

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Case No: 08-35653-KRH

Chapter 11

(Jointly Administered)

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**MOTION TO PERMIT THE FILING OF A CLASS PROOF OF CLAIM
WITH SUPPORTING MEMORANDUM**

Movants Maria G. Moncayo and Luetta Smith (“Movants” or “Plaintiffs”), by and through their undersigned attorneys, and pursuant to Rules 7023 and 9014 of the Federal Rules of Bankruptcy Procedure, file this Motion to Permit the Filing of a Class Proof of Claim (the “Motion”) seeking entry of an order allowing the Movants to file one (1) Proof of Claim for the a certain class of plaintiffs (the “Moncayo Settlement Class”), as certified in the class action proceeding in the Los Angeles County Superior Court, Case No. BC368793, styled *Maria G. Moncayo et al. v. v. Circuit City, Inc.* The grounds for the Motion are as follows:

1. The Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334.
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are, *inter alia*, §§ 105, 361 and 362(d)(1) of the Bankruptcy Code, and Bankruptcy Rules 4001 and 9014.

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Parties

4. On November 10, 2008 (the “Petition Date”), the Debtor and several related entities filed Petitions under Chapter 11 of the Bankruptcy Code.

5. The Debtor is in possession of its assets and is acting as a “debtor-in-possession” under 11 U.S.C. § 1107.

6. The Movants are the class representatives of a class of former employees of the Debtor.

The Litigation

7. On April 5, 2007, the Plaintiffs filed a proposed class action complaint in Los Angeles County Superior Court, Case No. BC369011, styled *Maria G. Moncayo et al. v. Circuit City, Inc.* (the “California Litigation”).

8. In August 2008, Plaintiffs and the Debtor reached a settlement of the California Litigation, which was documented in a Joint Stipulation of Settlement Agreement and Release of Class Action Claims (the “Settlement Agreement”). A genuine copy of the Settlement Agreement is attached hereto as Exhibit 1.

9. On or about October 31, 2008, the Los Angeles County Superior Court entered an Order Granting Preliminary Approval of Class Action Settlement and set a hearing for January 14, 2009 to consider final approval of the Settlement Agreement, which hearing did not occur because of the Debtor’s bankruptcy filing.

Relief Requested

10. Movants seek the entry of an order permitting them to file one (1) Proof of Claim on behalf Moncayo Settlement Class. When considering this issue, Courts routinely permit a

class of plaintiffs to file a single proof of claim. See, e.g., Trebol Motors Distributor Corp. v. Bonilla (In re Trebol Motors Distributor Corp.), 220 B.R. 500 (B.A.P. 1st Cir. 1998) (holding that a pre-petition certified class holding a final judgment against the debtor could file a single proof of claim); Collier on Bankruptcy, § 10-7023 (15th Edition) (summarizing cases and stating that “the prevailing view” is for the allowance of class claims). In this case, the rationale for filing a single proof of claim is straightforward – the Moncayo Settlement Class is entitled to be paid in this bankruptcy case as an entity pursuant to the Settlement Agreement, which has been finally approved pursuant to applicable California law. Furthermore, as found by the Los Angeles County Superior Court in the California Litigation, all elements requiring class certification under Rule 7023 exist. No reason justifies requiring the individual class members to each file a proof of claim and, accordingly, the Court should permit the Movants to file a single proof of claim on behalf of the Moncayo Settlement Class.

WHEREFORE, the Movants request an Order, substantially in the form of Exhibit 2 attached hereto:

- (a) Permitting the Movants to file a single proof of claim on behalf of the Moncayo Settlement Class; and
- (b) Granting such other relief as this Court deems just and proper.

Dated: January 22, 2009

Respectfully submitted,

WHITEFORD, TAYLOR & PRESTON,
LLP,

/s/ Christopher A. Jones

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January, 2009, a copy of the foregoing Motion was filed and served via the Court's Electronic Case Filing System on all parties receiving such notice and on all parties on the attached Service List.

/s/ Christopher A. Jones

Counsel